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DATO' SAIZO ABDUL GHANI

v.

CELCOM (MALAYSIA) BHD & ANOR

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MAHKAMAH TINGGI MALAYA, KUALA LUMPUR
TENGKU MAIMUN J
[SUIT NO: S4-23-46-2006]
27 NOVEMBER 2007

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TORT: *Defamation - Publication of libelous material - Alleged libelous letter issued by second defendant on behalf of first defendant and sent only to plaintiff - Whether there had been publication to third party*

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TORT: *Defamation - Qualified privilege - Alleged libelous letter issued to plaintiff by second defendant on behalf of first defendant and copied to first defendant - Letters issued within scope of second defendant's usual authority and in ordinary course of first defendant's business - Whether defendants protected by qualified privilege - Whether first defendant had a corresponding interest to receive letter*

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CIVIL PROCEDURE: *Striking out - Defamation action - Failure by plaintiff to plead particulars of documents that were purportedly defamatory - No publication of alleged defamatory letter - Plaintiff's claim frivolous, vexatious and an abuse of process of court*

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The plaintiff was a dealer of the first defendant's pre-paid cards and starter packs. The first defendant organized a contest ("the contest"). One of the terms of the contest was that pre-sale activation of prepaid starter packs involving airtime transfers were prohibited. The initial results for the contest showed that the plaintiff had among the top pack activations but later the first defendant discovered that the plaintiff had

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participated in pre-sale activation involving improper airtime transfers. *Vide* a letter dated 21 November 2005 the second defendant on behalf of the first defendant wrote to the plaintiff viewing the matter very seriously and strongly urging the plaintiff to put an immediate stop to such activities. The above letter was copied to the Chief Operating Officer and the Regional General Manager, Eastern Region of the first

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defendant. Another letter dated 27 December 2005 was also sent to the plaintiff by the second defendant on behalf of the first defendant. The plaintiff alleged that the said letters were defamatory and claimed against the defendant for damages for defamation and breach of contract. The defendants applied to strike out the plaintiff's claim, inter alia, on the

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ground that: (i) the plaintiff had not pleaded the particulars of the documents that were purportedly defamatory; (ii) there was no publication in law and in fact of the excerpts pleaded by the plaintiff

from the two letters as the said letters were issued by the second defendant on behalf of the first defendant and sent only to the plaintiff; and (iii) the said letters were issued by the second defendant for and on behalf of the first defendant within the scope of the second defendant's usual authority and/or in the ordinary course of the first defendant's business. The learned deputy registrar dismissed the defendant's application, hence this appeal.

Held (allowing the defendant's appeal with costs):

(1) The letter dated 21 November 2005 was sent to the plaintiff and clearly it could not be said that there had been publication to third party. (para 13)

(2) The defendants were protected by qualified privilege as the Chief Operating Officer and the Regional Manager of the Eastern Region of the first defendant had a corresponding interest to receive the letter. This was fortified by the fact that the subsequent letter of termination of the plaintiff's dealership was signed by the Chief Operating Officer of the first defendant. (para 13)

(3) Therefore, the plaintiff's claim against the defendant was frivolous, vexatious and an abuse of the process of the court. Further, the plaintiff had not set out any facts which formed the basis of the alleged breach of contract. (para 13)

Case(s) referred to:
Reynolds v. Times Newspapers Ltd & Others [1999] 3 WLR 1010 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 18 rr. 19(1)(a), (b), (d)

For the plaintiff - Zulhasmi Zakaria; M/s Sahlan & Assoc
For the defendant - S Nanthabalan (Norliza Rasool Khan with him); M/s Zul Rafique & Partners

Reported by Amutha Suppayah

JUDGMENT

Tengku Maimun J:

[1] The plaintiff's claim against the defendant is for damages for defamation and breach of contract and the relevant paragraphs of the statement of claims read:

> 1. Plaintif adalah seorang individu yang berniaga atas nama Airtime Telecommunication, No. Pendaftaran KT0177245-U, beralamat

di No. 51, Tanjung Chat, Jalan Pengkalan Chepa, 15400 Kota Bharu, Kelantan. Plaintif merupakan Pengedar Utama (Key Dealer) kad prabayar untuk Defendan Pertama.

2. Defendan Pertama adalah sebuah Syarikat Berhad yang ditubuhkan di Malaysia di bawah Akta Syarikat 1965 dan beralamat berdaftar di Level 15, Menara Celcom, 82, Jalan Raja Muda Abdul Aziz, 50300 Kuala Lumpur.

3. Defendan Kedua adalah seorang individu dan merupakan seorang kakitangan Defendan Pertama dan berjawatan sebagai Ketua Jualan Runcit (Head of Retail Sales) dan pada setiap masa yang material merupakan penulis surat-surat tersebut.

4. Di muka surat pertama dan kedua dalam kedua-dua surat tersebut telah dikeluarkan yang mengandungi perkataan-perkataan berunsur fitnah berkenaan Plaintif dan/atau berkenaan perniagaan Plaintif dan/atau difahamkan dan/atau mampu difahamkan merujuk kepada Plaintif seperti berikut:

Butir-butir Perkataan Berunsur Fitnah

a) Plaintif dan perniagaan yang dijalankannya adalah pengedar kad prabayar bagi Defendan Pertama.

b) "Ada perkara-perkara tidak normal berlaku terhadap stok yang dikendalikan oleh perniagaan Plaintif" (Surat bertarikh 21hb November 2005)

c) "Telefon mudah alih bernombor 013-9007262 mempunyai siri-siri perbuatan perpindahan 'airtime' dari nombor prabayar 013 yang lain melibatkan nilai RM25.00 bagi setiap transaksi" (Surat bertarikh 21hb November 2005)

d) "Kami dapati nombor telefon mudah alih 013-9002327 juga menunjukkan perbuatan perpindahan 'airtime' yang sama" (Surat bertarikh 21hb November 2005)

e) Semua "starter packs" didapati adalah stok yang dibeli oleh perniagaan Plaintif dan pengedar sah Defendan Pertama. Keadaan itu menunjukkan perniagaan Plaintif terlibat dengan cara perniagaan yang tidak betul/diingini (undesired business conduct) yang boleh menjejaskan reputasi Celcom (Defendan Pertama), keyakinan pelanggan-pelanggan dan perniagaan Celcom yang lebih luas.

f) "Dukacita dimaklumkan bahawa tindakan berikut dikenakan ke atas perniagaan tuan:

1. Semua akaun yang diaktifkan dalam tempoh program tetapi didapati melakukan perpindahan "airtime" secara

salah tidak layak dikira sebagai sebahagian daripada keseluruhan prestasi anda" (surat bertarikh 21hb November 2005)

g) "Kami menganggap perkara ini sangat serius dan dengan tegas meminta perniagaan tuan menghentikan perbuatan-perbuatan tersebut. Kami harap tuan-tuan menganggap ini sebagai amaran keras dan kegagalan berbuat demikian akan menyebabkan Celcom mengambil tindakan selanjutnya." (surat bertarikh 21hb November 2005)

h) Para pemenang yang diumumkan pada 3hb Oktober di Sheraton Imperial Hotel adalah pemenang-pemenang yang telah disahkan kelayakannya. Kami tidak mengumumkan pemenang-pemenang lain kerana kami mendapati unsur-unsur penyalahgunaan perkhidmatan "Airtime Transfer". Sila rujuk surat kami bertarikh 21hb November 2005, bertajuk "CELCOM Xpac – Unethical Business Conduct". (Surat bertarikh 27hb Disember 2005).

i) "Seterusnya kami telah menjalankan semakan terperinci ke atas semua pek permulaan Xpac pembelian syarikat tuan yang diaktifkan sepanjang tempoh promosi dan didapati sejumlah 5,905 akaun telah terlibat dengan penyalahgunaan perkhidmatan "Airtime Transfer". (surat bertarikh 27hb Disember 2005)

j) "Seperti yang telah kami jelaskan di empat persidangan "Prepaid Key Dealers" yang berasingan iaitu pada 15hb Jun 2005 (The Prince Hotel), 15hb Julai 2005 (PNB Darby Park), 30hb Ogos 2005 (Istana Hotel), dan 3hb Oktober 2005 (Sheraton Imperial Hotel), kami telah memberi amaran keras bahawa sekiranya didapati penyalahgunaan "Airtime Transfer" tindakan tegas akan diambil". (surat bertarikh 27hb Disember 2005)

k) "Aktiviti sedemikian telah menjurus kepada kegiatan-kegiatan tidak beretika yang telah memudaratkan reputasi Celcom, keyakinan pelanggan dan pasaran keseluruhannya". (surat bertarikh 27hb Disember 2005)

l) "Oleh yang demikian berdasarkan terma dan syarat yang ditetapkan oleh Celcom, penyalahgunaan "Air Time Transfer" yang dijalankan oleh syarikat tuan dianggap sebagai satu kesalahan". (surat bertarikh 27hb Disember 2005)

"Melalui risalah bercetak "Xpac Prepaid Ativation Incentive Program" telah dinyatakan di bawah Terma & Syarat No. 7 "Celcom has the sole right to accept or reject any starter packs deemed to be non eligible under this program" yang

bermaksud Celcom berhak untuk menerima atau menolak segala pek permulaan yang didapati tidak menepati kelayakan di bawah Program ini". (Surat bertarikh 27hb Disember 2005)

m) "Keputusan yang telah dilaksanakan adalah keputusan muktamad bersama yang telah dipersetujui oleh ahli jawatankuasa terlibat dan pihak Pengurusan. Segala keputusan adalah berdasarkan fakta-fakta yang nyata". (surat bertarikh 27hb Disember 2005)

n) "Setiap program yang kami tawarkan mestilah melalui proses-proses yang tertentu berdasarkan keputusan daripada laporan Bahagian Teknologi Maklumat (IT) dan diaudit oleh Bahagian Kewangan." (surat bertarikh 27hb Disember 2005)

o) "Di dalam Pertandingan Xtreme Challenge Round II, jumlah pengaktifan syarikat tuan yang layak adalah 4,176 dan ini meletakkan syarikat tuan di tempat Kedua di peringkat Kawasan Timur untuk meraih hadiah berjumlah RM22,888.00. Ini adalah keputusan setelah diambil kira aktiviti-aktiviti penyalahgunaan "Airtime Transfer" seperti yang telah dinyatakan di dalam surat-surat kami yang bertarikh 21hb November 2005 dan 29hb November 2005. Seterusnya ini juga bermakna tiada pemenang untuk kategori "Grand" dan Pertama di Kawasan Timur." (surat bertarikh 27hb Disember 2005)

Begitu juga, bagi peringkat Nasional secara keseluruhan tiada pemenang yang layak bagi tempat Pertama, Kedua dan Ketiga.

p) "Sementara itu, pengumuman syarikat tuan sebagai penyandang No.1 "Top Ten Prepaid Key Dealers Qtr 3 2005" di Legend Hotel bertarikh 21hb November 2005 adalah khususnya berdasarkan prestasi jualan dari bulan Julai 2005 hingga September 2005." (surat bertarikh 27hb Disember 2005)

q) "Dengan penjelasan di atas, ingin kami tegaskan bahawa pihak Celcom telah mengambil kira segala fakta di dalam menentukan keputusan bagi "Celcom Xtreme Challenge Round II." (surat bertarikh 27hb Disember 2005)

6. Perkataan berunsur fitnah dalam ertikata dan maksud semulajadi serta biasanya bermaksud dan mampu difahamkan bermaksud bahawa:

a) Plaintif dan perniagaannya telah tidak berurus niaga dengan cara betul dan malah meragukan.

b) Plaintif seorang yang tidak beretika dan menjalankan perniagaan secara salah dan menjejaskan orang ramai.

c) Plaintif melakukan perbuatan manipulasi "Airtime" untuk motif mengaut untung secara tidak beretika.

d) Plaintif melakukan penipuan dengan membuat pindahan "Airtime".

e) Stok kit permulaan (starter pack) yang diurusniaga oleh Plaintif mencurigakan dan disangsikan.

f) Plaintif adalah pengedar yang tidak boleh dipercayai dan tidak amanah.

g) Plaintif adalah punca kepada ketidakyakinan pelanggan Celcom dan perosak reputasi Celcom.

9. Pada setiap masa yang material atau lebih kurang pada bulan November dan Disember 2005 Defendan Kedua dalam menjalankan urusan sebagai Pegawai Defendan Pertama dan/atau bagi pihak Defendan Pertama telah menghantarkan, mengeluarkan dan atau menyebabkan dihantar surat-surat tersebut.

10. Disebabkan oleh pengeluaran, pengedaran dan pendedahan surat-surat tersebut mengakibatkan reputasi serta nama baik Plaintif telah tercemar, terhina dan rosak teruk serta dimalukan.

11. Plaintif menegaskan disebabkan oleh pengeluaran, pengedaran dan pendedahan surat-surat Defendan-defendan Pertama, Kedua mendapat habuan keuntungan atau pendapatan berapa wang ringgit.

13. Maka Plaintif menuntut penghakiman terhadap Defendan-Defendan Pertama dan Kedua untuk:

a) Pampasan gantirugi am sebanyak RM15,000,000.00 atas perbuatan tort, libel dan pelanggaran kontrak Defendan Pertama dan Kedua terkandung di dalam surat-surat yang tidak benar dan memfitnah Plaintif bertarikh 21 November 2005 dan 27 Disember 2005 dan seterusnya dikeluarkan dan diedarkan semula oleh Defendan-Defendan Pertama dan Kedua kepada pihak-pihak tertentu.

b) Pampasan gantirugi dan (exemplary damages) dan gantirugi teruk sebanyak RM15,000,000.00 atas perbuatan tort libel yang terkandung di dalam surat-suart Defendan Pertama dan Kedua.

c) Tambahan secara alternatif gantirugi am, gantirugi teladan dan gantirugi teruk atas perbuatan kepalsuan, tidak benar dan niat jahat oleh Defendan-Defendan Pertama dan Kedua

dengan mengeluarkan dan mengedarkan surat-surat tidak benar memfitnah Plaintif bertarikh 21 November 2005 dan 27 Disember 2005 dan seterusnya dikeluarkan dan diedarkan semula oleh Defendan-Defendan Pertama dan Kedua.

d) Perintah injunksi untuk melarang, menghalang dan menyekat Defendan-Defendan dan/atau pekerja-pekerja dan/atau ejen-ejen dan/atau wakil-wakil defendan-defendan dalam apa cara jua atau bentuk daripada mengeluarkan dan/atau mengedar dan/atau menyebabkan atau dikeluar atau diedar surat-surat atau bahan tidak benar dan memfitnah Plaintif dan/atau perkataan yang seumpamanya yang berunsur fitnah terhadap Plaintif.

e) Faedah dari tarikh penghakiman sehingga penyelesaian penuh.

f) Kos tindakan ini; dan

g) Relif-relif lain yang difikirkan wajar dan adil oleh Mahkamah yang Mulia.

[2] What could be seen from the above is that the plaintiff merely reproduced the contents of the letters without properly pleading the particulars of the alleged defamatory letters.

[3] *Vide* encl. 6 the defendants filed an application to strike out the plaintiff's claim pursuant to O. 18 r. 19(1)(a) and/or (b) and/or (d) of the Rules of the High Court 1980 and/or pursuant to the inherent jurisdiction. The application is premised *inter alia* on the ground that:

1. The plaintiff has not pleaded the particulars of the documents that are purportedly defamatory.

2. There is no publication in law and in fact of the excerpts pleaded by the plaintiff from the two letters dated 21 November 2005 and 27 December 2005 (the said letters) as the said letters were issued by the second defendant on behalf of the first defendant and sent only to the plaintiff.

3. The said letters were issued by the second defendant for and on behalf of the first defendant within the scope of the second defendant's usual authority and/or in the ordinary course of the first defendant's business.

4. Further, although a claim for damages for alleged breach of contract has been prayed for by the plaintiff, the plaintiff has failed to set out any factual or other basis for the said relief.

The learned deputy registrar dismissed the defendant's application, hence this appeal *vide* encl 11. A

[4] The plaintiff (trading as Airtime Telecommunication) was a dealer of the first defendant's pre-paid cards and starter packs. Between 16 June 2005 and 15 July 2005 the first defendant organized a contest known as 'X-treme Challenge (Round II) Contest (hereinafter referred to as the Contest). The Contest was designed to increase and/or encourage the number of prepaid starter pack activations produced by the first defendant for mobile phones during the period of the Contest. B

[5] The contest was open to all of the first defendant's prepaid dealers and the plaintiff had taken part in the contest. In relation to the contest, the first defendant had issued a pamphlet to all its prepaid dealers including the plaintiff setting out the rules of the contest, *inter alia* as follows: C

i. Only one winner will be declared for each prize tier for the Regional high Achievers Prizes Category and the National Grand Prizes Category respectively; D

ii. In the event there are no qualifiers for any of the tiers, no winners will be announced for the relevant tier; E

iii. The first defendant has the sole right to accept or reject any starter pack deemed to be non eligible under this program.

[6] Prior to the Contest on 15 June 2005 the first defendant held a briefing session for its dealers. One Abdul Ghani Abdul Razak attended on behalf of the plaintiff during which briefing the first defendant reminded the dealers of the various express and implied terms of the contest including and in particular that pre-sale activation of prepaid starter packs involving airtime transfers were prohibited and would not be taken into account in determining the winners of the contest. F G

[7] Further, by a fax dated 21 June 2005 to all its dealers, the first defendant warned that dealers should not pre-activate the prepaid starter packs and that such activity was deemed "unacceptable business conduct" which may result in a termination of the perpetrator's dealership. H

[8] The initial results for the contest showed that the plaintiff had among the top pack activations but on investigation by the first defendant, it was discovered that the plaintiff had participated in pre-sale activation or prepaid starter packs involving improper airtime transfers. *Vide* a letter dated 21 November 2005 the second defendant on behalf of the first defendant wrote to the plaintiff, the relevant parts read: I

Based on an initial investigation, we have found that there are some abnormalities which involve the stock that your company purchased from our authorized distributors.

Our record shows that the mobile no. 013-9007262 has a series of airtime transfer transactions form other 013 prepaid accounts involving RM25.00 per transaction. Below is an extract from the report:

…

We also found that another mobile no. 013-9002327 shows similar airtime transfer transaction. Below is an extract from the report:

…

All of these starter packs were found to be part of the stock purchased by your company from our authorized distributor. The above circumstances lead to indicate that your company has engaged in an undesired business conduct that could be detrimental to Celcom's reputation, our customers' confidence and the trade at large.

We regret to advise therefore that the following action shall be imposed on your company:

1. All accounts that were activated during this program period BUT were found to have done inappropriate airtime transfer shall NOT be eligible as part of your total performance count.

We view this matter very seriously, and strongly urge your company to put an immediate stop to such activities. We hope that you take this as a stern warning, failing which, CELCOM would have to consider further actions.

We strictly would like to remind you that as our Prepaid Key Dealer, your company is bound to the terms and conditions that Celcom has set to all our business partners.

The above letter was copied to the Chief Operating Officer and the Regional General Manager, Eastern Region (where the plaintiff was based) of the first defendant.

[9] By another letter dated 27 December 2005 the second defendant on behalf of the first defendant wrote to the plaintiff as follows:

Terima kasih di atas surat tuan bertarikh 6hb Disember 2005, susulan daripada surat kami bertarikh 21hb dan 29hb November 2005 (seperti lampiran).

Kami amat prihatin di atas kandungan surat tersebut dan sehubungan dengan itu, pihak Ibupejabat Celcom bersama-sama Pejabat Kawasan Timur Celcom telah membuat penelitian dan berikut adalah penjelasan kami:

1) Para pemenang yang diumumkan pada 3hb Oktober di Sheraton Imperial Hotel adalah pemenang-pemenang yang telah disahkan kelayakannya. Kami tidak mengumumkan pemenang-pemenang lain kerana kami mendapati unsur-unsur penyalahgunaan perkhidmatan 'Airtime Transfer'. Sila rujuk surat kami bertarikh 21hb November 2005, bertajuk "CELCOM Xpax – Unethical Business Conduct".

2) Seterusnya, kami telah menjalankan semakan terperinci ke atas semua pek permulaan Xpax pembelian syarikat tuan yang diaktifkan sepanjang tempoh promosi dan didapati sejumlah 5,905 akaun telah terlibat dengan penyalahgunaan perkhidmatan 'Airtime Transfer'.

3) Seperti yang telah kami jelaskan di empat persidangan "Prepaid Key Dealers" yang berasingan iaitu pada 15hb Jun 2005 (The Prince Hotel), 15hb Julai 2005 (PNB Darby Park), 30hb Ogos 2005 (Istana Hotel), dan 3hb Oktober 2005 (Sheraton Imperial Hotel), kami telah memberi amaran keras bahawa sekiranya didapati penyalahgunaan 'Airtime Transfer', tindakan tegas akan diambil.

   Aktiviti sedemikian telah menjurus kepada kegiatan-kegiatan tidak beretika yang telah memudaratkan reputasi Celcom, keyakinan pelanggan dan pasaran keseluruhannya.

4) Oleh yang demikian berdasarkan terma dan syarat yang ditetapkan oleh Celcom, penyalahgunaan "Air Time Transfer" yang dijalankan oleh syarikat tuan telah dianggap sebagai satu kesalahan.

   Melalui risalah bercetak "Xpax Prepaid Activation Incentive Program", telah dinyatakan di bawah Terma & Syarat No. 7. "Celcom has the sole right to accept or reject any starter packs deemed to be non eligible under this program" yang bermaksud Celcom berhak untuk menerima atau menolak segala pek permulaan yang didapati tidak menepati kelayakan di bawah Program ini.

5) Keputusan yang telah dilaksanakan adalah keputusan muktamad bersama yang telah dipersetujui oleh ahli jawatankuasa terlibat dan pihak Pengurusan. Segala keputusan adalah berdasarkan fakta-fakta yang nyata.

6) Setiap program yang kami tawarkan mestilah melalui proses-proses yang tertentu berdasarkan keputusan daripada laporan Bahagian Teknologi Maklumat (IT) dan diaudit oleh Bahagian Kewangan.

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7) Di dalam Pertandingan Xtreme Challenge Round II, jumlah pengaktifan syarikat tuan yang layak adalah 4,176 dan ini meletakkan syarikat tuan di tempat Kedua di peringkat Kawasan Timur untuk meraih hadiah berjumlah RM22,888. Ini adalah keputusan setelah diambil kira aktiviti-aktiviti penyalahgunaan "Airtime Transfer" seperti yang telah dinyatakan di dalam surat-surat kami yang bertarikh 21hb November 2005 dan 29hb November 2005. Seterusnya, ini juga bermakna tiada pemenang untuk kategori 'Grand' dan Pertama di Kawasan Timur.

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Begitu juga, bagi peringkat Nasional secara keseluruhan tiada pemenang yang layak bagi tempat Pertama, Kedua dan Ketiga.

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8) Sementara itu, pengumuman syarikat tuan sebagai penyandang No. 1 "Top Ten Prepaid Key Dealers Qtr 3 2005" di Legend Hotel bertarikh 21hb November 2005 adalah khususnya berdasarkan prestasi jualan dari bulan Julai 2005 hingga September 2005.

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Dengan penjelasan di atas, ingin kami tegaskan bahawa pihak Celcom telah mengambil kira segala fakta di dalam menentukan keputusan bagi "Celcom Xtreme Challenge Round II.

[10] The plaintiff the alleged that the letters from the defendants dated E 21 November 2005 and 27 December 2005 (the said letters) are defamatory of the plaintiff.

[11] Learned counsel for the defendant in his written submission argued *inter alia* that the plaintiff's claim discloses no reasonable cause of action F as the particulars of the documents that are purportedly defamatory are not pleaded. Further learned counsel argued that there is no publication of the said letters as the said letters were merely copied to the officers of the first defendant who had a corresponding interest or duty to be informed of the said letters. Learned counsel therefore contended that the defendants are protected by the defence of qualified privilege. In support G thereof learned counsel cited the case of *Reynolds v. Times Newspapers Ltd and Others* [1999] 3 WLR 1010 wherein at p. 1050 Lord Hope of Craighead said:

> At the heart of the matter is the question whether "the occasion" is H privileged. This occurs where the person who makes the communication has an interest or duty to make it to the person to whom it was made, and the person to whom it is made has a corresponding interest or duty to receive it"

[12] Learned counsel for the plaintiff in submitting that this is not a I proper case to be dealt with under O. 18 r. 19 argued *inter alia* that publication had in fact been made to a third party ie, one Abdul Ghani bin Abdul Razak. It is important to note that this fact has not been

pleaded by the plaintiff and hence I do not think it is open for the learned counsel to submit on the alleged publication to Abdul Ghani bin Abdul Razak. In any event Abdul Ghani had attended a briefing on behalf of the plaintiff on 15 June 2005 and the letter dated 21 November 2005 was addressed as folows:

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> En. Abdul Ghani Abdul Razak
> Airtime Telecommunications
> Lot 1499-a, Jalan Long Yunus
> 15200 Kota Bharu
> Kelantan

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[13] Undeniably this letter was sent to the plaintiff and clearly it could not be said that there has been publication to third party. There is also no doubt that based on *Reynolds, supra* the defendants are protected by qualified privilege as the Chief Operating Officer and the Regional Manager of the Eastern Region of the first defendant has a corresponding interest to receive the letter. This is fortified by the fact that the subsequent letter of termination of the plaintiff's dealership was signed by the Chief Operating Officer of the first defendant. In respect of defamation I am therefore of the view that the plaintiff's claim against the defendant is frivolous, vexatious and an abuse of the process of the court. Further, I am in agreement with learned counsel for the defendant that the plaintiff had not set out any facts which form the basis of the alleged breach of contract. The defendant's appeal in encl. 11 was therefore allowed with costs and the claim was consequently struck out.

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